

Message Text

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C O N F I D E N T I A L NEW DELHI 11224

EO 11652: GDS

TAGS: PINR, IN

SUBJ: INFORMATION ON JUDGES HEARING MRS GANDHI'S CASE

REF: A. STATE 191990

B. NEW DELHI 11162

1. CHIEF JUSTICE A.N. RAY HEADS THE FIVE MAN BENCH HEARING MRS GANDHI'S CASE. HE HAS APPOINTED JUSTICES MATHEW, BEG, CHANDRACHUD AND KHANNA TO JOIN HIM. BELOW IS WHAT INFORMATION WE HAVE ACQUIRED ON THEIR RESPECTIVE ATTITUDES AND REPUTATIONS.

2. FOUR OF THE FIVE JUSTICES HEARING MRS GANDHI'S CASE ARE AMONG THE FIVE LABELLED AS "PROGRESSIVES" OR "COMMITTED" JUDGES ON THE SUPREME COURT. THEY ARE RAY, MATHEW, BEG AND CHANDRACHUD. AS CHIEF JUSTICE, RAY DECIDED ON THE COMPOSITION OF THE BENCH.

3. SHANTI BHUSHAN WILL BE FACING THE UNPLEASANT PROSPECT OF ARGUING THE APPLICABILITY OF A SUPREME COURT DECISION FROM WHICH THREE OF THE FIVE JUDGES BEFORE HIM (RAY, BEG, MATHEW) DISSENTED. THE DECISION (SEE NEW DELHI 10916) IS A SIGNED 1973 "DECLARATION" NINE SUPREME COURT JUSTICES HOLDING THAT PARLIAMENT CANNOT AMEND AWAY "THE BASIC STRUCTURE AND FRAMEWORK OF THE CONSTITUTION." EVEN GRANTING A CHANGE OF HEART
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OVER THE VALIDITY OF THE "DECLARATION," AMONG THESE THREE

JUDGES, BHUSHAN WILL BE ON DIFFICULT GROUND PROVING THAT THE THIRTY NINTH AMENDMENT CHALLENGES THE STRUCTURE OR FRAMEWORK OF THE CONSTITUTION. IF THE BENCH DECIDES AGAINST BHUSHAN, THE CASE AGAINST MRS GANDHI WILL ALMOST CERTAINLY LAPSE.

4. DESPITE THE APPARENT BALANCE IN HER FAVOR, MRS GANDHI, CANNOT REST COMPLETELY ASSURED THAT THE COURT WILL THROW OUT BHUSHAN'S ARGUMENTS. MRS GANDHI CANNOT DICTATE A RULING TO THE COURT AS SHE CAN DO TODAY IN PRACTICALLY EVERY OTHER AREA. BHUSHAN MAY BE ABLE TO LENGTHEN THE HEARING THROUGH PROCEDURAL MOVES (INCLUDING A REQUEST FOR A FULL BENCH), THUS KEEPING THE CASE ALIVE. KRISHNA IYER, WHO IS THE FIFTH JUDGE LABELLED BY THOSE CLOSE TO THE COURT AS "COMMITTED", GAVE MRS GANDHI ONLY HALF A LOAF ON JUNE 24 WHEN HE GRANTED A PARTIAL INSTEAD OF ABSOLUTE STAY.

5. IN SUM, HOWEVER, THE PRESENT COMPOSITION OF THE BENCH AND THE APPARENT WEAKNESS OF BHUSHAN'S CASE WILL BE VERY STRONG FACTORS WORKING FOR MRS GANDHI WHEN THE HEARING COMMENCES ON AUGUST 25.

6. BIOGRAPHIC DATA ON THE INDIVIDUAL JUSTICES WHO WILL HEAR THE PRIME MINISTER'S CASE FOLLOWS BY SEPTTEL.
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